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No. 07-181

FILED
OCT 23 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

BRUCE TURNER

Petitioner,

VS.

UNITED STATES OF AMERICA

Respondent.

On Petition For Rehearing of Petition For Writ of Certiorari To The United States Court of Appeals For The First Circuit

PETITION FOR REHEARING

BRUCE TURNER, *Pro-Se*
Reg. No: 24622-038
USP COLEMAN #1
POST OFFICE BOX 1033
COLEMAN, FL 33521-1033

REQUEST TO GRANT PETITION

The petitioner, Bruce Turner, respectfully requests that this Honorable Court grant this Petition for Rehearing of the order denying his Peition for Writ of Certiorari dated October 1, 2007, and hear argument and address, "once and for all," the *Almendarez-Torres* prior conviction exception, and, even more specifically, how it relates to a defendant that went to trial before a jury.

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STATUTES

18 U.S.C. § 922(g) 1, 2, 3

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . .

18 U.S.C. § 922(g)(1) and section 2

(g) It shall be unlawful for any person – (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; section 2 – to receive any firearm or ammunition which has been shipped or trans-ported in interstate or foreign commerce.

18 U.S.C. § 924(a)(2)

Whoever knowingly violates subsec tion . . . (g) . . . of section 922 shall be fined as provided in this title, imprinsoned not more than 10 years, or both.

18 U.S.C. § 924(e)(1)

In the case of a person who violates 922(g) of this title, and has three previous convictions . . . for a violent felony or a serious drug offense, or both . . . , such person shall be fined under this title and imprisoned not less than fifteen years, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence of, such a person with respect to the conviction under section 922(g).

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ARGUMENT

Picture, if you will, a man. A man with a loving mother, a young brother. And this man has a daughter. A beautiful little girl. He loves them all very much – and they love him too. Despite all of his shortcomings and bad choices in live – they still love him.

This man has had trouble in his life, and heartache, almost from the very beginning. His father was murdered when he was just six years old. His mom had a nervous breakdown because of it, so he and his brother must rely solely on his grandmother for just about everything, including what they will eat. His grandmother is everything to him – to them – and then she dies when he is in his early teens. He has watched her suffer for the past several years and whither away from breast cancer and chemotherapy. Life has done it to him again – to them – and things only get worse.

So what does the teen turn to? Alcohol. Not a good choice, but what does he know. It makes the pain bearable, if only for a little while – or so he thinks.

With alcohol comes the bad choices, and this teen starts to get into trouble with the law. Not major trouble, but trouble nonetheless. A fight every once in a while. An argument with a girlfriend, with some shoving on both of their parts. (Alcohol will do that.) And other things, but nothing that would lead anyone to believe that he's too far gone. No armed robberies, no burglaries, nothing that would say that he leads a life of crime. When he doesn't drink, he doesn't get into trouble – it's as simple as that.

This man is different when he's drinking. Alcohol changes him. He tries hard and stops. He's always successful for a while, and he does good, but when things start to haunt him again, he goes back to what he knows – alcohol. He goes on like this for many years.

This man was indicted in 2003 and charged in federal court with being a felon in possession of a firearm *(18 U.S.C. § 922(g))*. It was alleged that this man stored two firearms at someone's house. Nothing more than that – just simply stored them there. The guy who was arrested with the guns, at his own house, would never see jail. He is free. He just had to blame it on this man. Simple.

When this man is arraigned, his family is there to support him. When the clerk reads the charge and says that the penalty is *"a maximum of up to ten years in prison"* for violating *18 U.S.C. § 922(g)*, both he and his family are shocked. Ten years is such a long time to be facing.

While he sat in jail, *"without bail,"* he maintained his innocence. His family urged him to fight this. *"You must go to trial before a jury"* – so that's exactly what he did. He went to trial on the matter before a jury.

At his trial his lawyer acknowledged, *"with his consent,"* that he had previously been convicted of a crime punishable by one year in jail. A felony according to federal rules – even if the crime was just a misdemeanor. If it carries a jail sentence of one year *"its a felon"*. This stipulation was given to the jury. The government had now proved *"one felony"*. The only thing now left

to prove was, did this man possess the guns. And with the testimony of the man who was caught with the guns at his house, the jury found that he did. It was said that this man gave the guns to the man who was caught with them.

The man and his family were shocked by the verdict, but what could be done. A jury had found him guilty. Now the only thing to do was to wait for sentencing and hope for the best. Just maybe, all things taken into account, he would get less than the ten years. Surely a reasonable judge would not give him the whole ten years just for storing two firearms according to the jury's verdict.

At sentencing, while his family looks on in complete horror, this man is told by the judge that after a review of his criminal record, and finding that he had been convicted previously of three felonies, that she must now sentence him pursuant to the *"Armed Career Criminal Act"* (ACCA) *18 U.S.C. § 924(e)*, which carries a minimum mandatory prison sentence of fifteen years and a maximum penalty of life. *"Armed Career Criminal,"* his mother cries. *"He's not an armed career criminal. He's never done anything really bad. He's a good boy. What happened to the ten year maximum? He was told before he went to trial that the most he was facing was ten years. Isn't ten years the maximum?"* The judge replied, *"Well yes, but not in this case. Let me explain,"* said the judge. *"He was charged and convicted of being a felon in possession of a firearm*, 18 U.S.C. 922(g), *which carries ten years, but having three prior convictions subjects him to a 'different maximum'."* *"What do you mean different maximum?"* *"There can only be*

one maximum penalty and we were told in this court that it was only ten years. No one told us of this ACCA. The jury was only told of one prior felony, not three. What is going on here?" The judge responds that the jury only has to hear of one felony and after that it is up to the judge to find the rest. *"If there are any more felonies on his criminal record, and if I determine that they are for either violent felonies or for any serious drug offense, I am forced to sentence him under the* Armed Career Criminal Act, 18 U.S.C. 924(e). *My hands are tied."* This man was sentenced to 235 months (19.7 years), while his family looked on grief stricken.

His family says to the judge, *"How can this be? Why wasn't the jury told of any of this? How can you raise the maximum penalty and punish him for more prior crimes than were brought before the jury?"* *"How you ask,"* replies the judge. "I will tell you how. *There is a case called* Almendarez-Torres, *which says that prior convictions can be used to enhance a federal sentence and that they don't have to be proved to a jury."*

"Isn't that a violation of my son's constitutional right to a jury trial?" his mother wants to know. *"The Constitution is there to protect us from things like this."* The judge responds, *"Well, many people feel that it is a violation, but until the Supreme Court changes this law, that's just the way it is. You have a right to appeal."*

This man was me. And this family was my family. There are thousands of families just like us because of the *Almendarez-Torres Prior Conviction Exception.*

Numerous petitions are filed with the Supreme Court every term asking the court to take another look at the *Almendarez-Torres Case, 523 U.S. 224 (1998)*, and how it relates to the ACCA, but they are continually denied despite, as Justice Thomas concedes in *Shepard v. United States, 125 S.Ct. at 1264, "a majority of the courts now recognize that* Almendarez-Torres *was wrongly decided."* And the lower courts simply refuse to hear anything about it *"because it is the Supreme Court's perrogative alone to overrule one of its precedents," State Oil Co. v. Khan, 522 U.S. 3 (1997).* And as in *Turner v. U.S., 1st Circuit Decision dated April 18, 2007, "we will not anticipate an overrulling or a sharp limitation of* Almendarez-Torres *by the Supreme Court."*

These rulings are repeated on a daily basis throughout this country. No one wants to be responsible – "just in case". Each court puts it on another court to avoid being the one to deal with this issue. But this issue will not go away. It will continue to flood the courts and be the subject of countless appeals and petitions until it is finally dealt with. And why shouldn't it be dealt with? It's a constitutional matter. The people need closure on it.

Someone must take the first step and address the *Almendarez-Torres* issue, "once and for all," and this writer would suggest that it must be the United States Supreme Court.

As the court in Apprendi noted, "*Almendarez-Torres* raised no question concerning the right to a jury trial or the standard of proof that would apply to a contested issue of fact." (*Apprendi v. New Jersey, 530 U.S. at 488).* The only issue was whether under the Fifth Amendment, the prior convictions should have been charged in the indictment. Since the Sixth Amendment issue was not factually or legally presented in *Almendarez-Torres*, that case should be seen only as a limited ruling on the Fifth Amendment indictment issue. Thus, *Almendarez-Torres* does not preclude application of Apprendi's Sixth Amendment ruling to prior convictions. (See Brief of *NACDL Amicus Curiae, Shephard v. United States, 125 S.Ct. 1254 (2005), pp. 7n.2, 8n3; Collen P. Murphy, The Use of Prior Convictions after Apprendi, 37 U.C. Davis L. Rev. 973, 974 (2004)*).

Almendarez-Torres is clearly in violation of an accused's Sixth Amendment right to a jury trial, especially when the accused went to trial before a jury in the first place. And it is the obligation and duty of this court, "The United States Supreme Court," to make sure, even if there's the slightest question that a law or a precedent is in violation of the Constitution, to address that issue and protect the rights of the people.

Families are being torn apart and ruined. Lives are being thrown away. And good people with much to offer society are being sent to prison, sometimes only because there are some underlying problems that can be fixed without putting them in prison for decades.

CONCLUSION

I pray that you will reconsider granting my Petition for Writ of Certiorari and finally deal with the *Almendarez-Torres* issues.

The courts need your guidance.

Respectfully Submitted,

Bruce Turner

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Dated: October 23, 2007

CERTIFICATION OF PRO SE PETITIONER

I, Bruce Turner, filing *Pro Se*, do hereby swear and declare that to the best of my knowledge this peition is filed in compliance to the restricted grounds specified in *Supreme Court Rule 44(2)* and that it is filed in good faith and not for delay.

I declare under the pains and penalty for purjury that the foregoing is true and correct.

Bruce Turner

APPENDIX A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 1, 2007

Mr. Bruce Turner
Prisoner ID 24622-038
USP Coleman
P.O. Box 1033
Coleman, FL 33521

Re: Bruce Turner
v. United States
No. 07-181

Dear Mr. Turner:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk